



PUBLIC NOTICE

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WTB AND OEA RELEASE PROTECTIVE ORDER TO PROVIDE AUCTION 110 APPLICANTS ACCESS TO CONTROLLED UNCLASSIFIED INFORMATION ON DEPARTMENT OF DEFENSE SYSTEMS IN THE 3.45–3.55 GHz BAND

AU Docket No. 21-62

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) jointly announce the release of a Protective Order that provides access, subject to certain safeguards, to Controlled Unclassified Information (CUI) about Department of Defense (DoD) systems and operations in the 3.45–3.55 GHz band relevant to particular flexible-use licenses to be offered in Auction 110.¹

2. As described in the *Auction 110 Procedures Public Notice*, Auction 110 will offer 4,060 new flexible-use licenses for spectrum in the 3.45–3.55 GHz band throughout the contiguous United States.² Particular licenses are subject to cooperative sharing requirements described in the *3.45 GHz Second Report and Order*³ and in the *Auction 110 Procedures Public Notice*.⁴ Interested parties will be able to find additional information about the cooperative sharing requirements, including information about the encumbrances in specific PEAs, on the National Telecommunications and Information Administration's (NTIA's) 3450-3550 MHz webpage at <https://www.ntia.doc.gov/category/3450-3550-mhz>. The public notice issued jointly by NTIA and the Commission's WTB provides further guidance and information on federal/non-federal coordination procedures.⁵

3. DoD has partnered with the National Coordinating Center for Communications (NCC), part of the Department of Homeland Security's Cybersecurity and Infrastructure Security Agency, to share sensitive information regarding DoD's incumbent operations, and NCC distributed this information

¹ *Auction of Flexible-Use Licenses in the 3.45–3.55 GHz Band*, AU Docket No. 21-62, Protective Order, DA 21-1026 (OEA and WTB, rel. Aug. 20, 2021).

² *Auction of Flexible Use Licenses in the 3.45–3.55 GHz Band For Next Generation Wireless Services; Notice and Filing Requirement, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 110; Bidding in Auction 110 Scheduled to Begin October 5, 2021*, AU Docket No. 21-62, Public Notice, at 5-6, paras. 7-9, Section I.C (Description of Licenses to be Offered in Auction 110) (OEA and WTB, rel. June 8, 2021) (*Auction 110 Procedures Public Notice*).

³ See *Facilitating Shared Use in the 3100-3550 MHz Band*, WT Docket No. 19-348, Second Report and Order, Order on Reconsideration, and Order of Proposed Modification, WT Docket No. 19-348, 36 FCC Rcd 5987, 5991-92, 5997, 5998-99 at 5-6, 11-14, paras. 8-9, 21, 23-25 (2021) (*3.45 GHz Second Report & Order*).

⁴ See *Auction 110 Procedures Public Notice* at 39, para. 115, Section III.B.1.a (Cooperative Sharing in the 3.45–3.55 GHz Band).

⁵ See *The Federal Communications Commission and the National Telecommunications and Information Administration: Coordination Procedures in the 3.45–3.55 GHz Band*, WT Docket No. 19-348, Public Notice, DA 21-645 (WTB Jun. 2, 2021) (*Joint Coordination Public Notice*).

to its industry members.⁶ In addition, DoD has facilitated access to this information by the FCC. In order to facilitate auction applicants' preparation for and participation in Auction 110, and in coordination with the DoD, the Protective Order will allow appropriate representatives of auction applicants to view this sensitive information subject to certain safeguards even if the auction applicant is not an NCC member.

4. As described in the Protective Order, access to DoD CUI is limited to United States citizens who are employed by or represent an Auction Applicant and to their Support Personnel who have a need to see DoD CUI. To be eligible to access the CUI, an individual must be a citizen of the United States acting on behalf of a person or entity that (i) has filed an application to participate in Auction 110 and (ii) has selected one or more license areas that overlap with coordination areas in its application. Further, if the individual requesting access to the CUI on behalf of an applicant is not the certifying official listed in the applicant's FCC Form 175 short-form application, then the certifying official must notify the FCC that it is authorizing that individual to seek access on behalf of the applicant. An eligible individual may only access the CUI after executing a copy of the Protective Order, thereby affirming the individual's eligibility, acknowledging receipt and understanding of the Protective Order, and agreeing to comply with the Protective Order's terms.

5. An eligible individual seeking access should sign and date the Acknowledgment in Appendix B of the Protective Order agreeing to be bound by the terms and conditions of the Protective Order and file the Acknowledgment with the Commission by sending it to auction110@fcc.gov. As noted, an individual's eligibility in part is based on the related applicant's selection of license areas. Communications regarding an applicant's selection of license areas are subject to the Commission's prohibition of certain auction-related communications. Consequently, communications regarding the execution and filing of a Protective Order also may be subject to that prohibition. After receiving an individual's executed Acknowledgment, and notice from the applicant's certifying official that the individual is authorized to seek access on behalf of the applicant, Commission staff will provide instructions directly to the eligible individual regarding applicable next steps for accessing the CUI. For this purpose, eligible individuals should ensure that the email address provided on the Acknowledgment will be used for the purpose of accessing the CUI.

6. Eligible individuals that execute the Protective Order may share the contents of CUI ONLY as provided by the terms of the Protective Order. More specifically, an eligible individual with access may share the contents of CUI accessed pursuant to the Protective Order only with another eligible individual representing the same applicant that has executed a copy of the Protective Order; or with those staff of the Department of Defense and NTIA who are authorized to see the information; or with the Commission and its staff who are authorized to see the information. Consequently, though accessing the information on behalf of an auction applicant, an eligible individual will NOT be able to share the contents of the CUI with the auction applicant, or with its agents or employees—*unless* those other individuals are authorized to review the information pursuant to the Protective Order. Furthermore, should any individual represent more than one applicant, the terms of the Protective Order limit an individual's ability to share accessed information with other parties that have executed a Protective Order *only* to those that have done so on behalf of the *same* applicant.⁷

7. In addition, any party with access to the CUI remains subject to applicable laws, rules, and other legal obligations limiting the sharing of the information, including, but not limited to, the Commission's rules prohibiting the communication of certain auction-related information.⁸ As already

⁶ DoD designated the information it shared with NCC "Controlled Unclassified Information" or "CUI," a category of information that should remain non-public but generally may be shared with people who have a need to know it.

⁷ In any event, individuals representing more than one applicant in any capacity in an auction with access to any bidding-related information present a significant risk of violating the Commission's prohibition on certain auction-related communications.

⁸ See 47 CFR 1.2105(c).

noted, the prohibition in part bars parties covered by the prohibition from disclosing to other covered parties the license areas an applicant selected in an application. Parties are reminded that accessing and sharing information regarding requirements for coordination in an area covered by a particular license may constitute disclosure of a bidding strategy with respect to that license and therefore may violate the Commission's prohibition.⁹ Notwithstanding that the Protective Order's terms alone do not bar parties from disclosing that they have executed and filed a Protective Order to obtain access to the information, the Commission's prohibition may bar disclosure of information regarding executing and filing a Protective Order in certain circumstances, such as in a manner that may communicate an applicant's selected license areas to another applicant. Accordingly, a party with access to CUI must take care to comply with all applicable laws, rules and other legal obligations even when sharing information is permitted by the terms of the Protective Order.

8. Interested parties should continue to monitor the Auction 110 webpage (www.fcc.gov/auction/110) for any future announcements regarding important auction information. For further information, contact Mary Lovejoy or Andrew McArdell of the Office of Economics and Analytics, Auctions Division at (202) 418-0660 or auCTION110@fcc.gov.

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⁹ See *Auction 110 Procedures Public Notice* at 16-22, paras. 43-66; *Guidance Regarding the Prohibition of Certain Communications During the Auction of Licenses in the 3.45–3.55 GHz Band (Auction 110)*, AU Docket 21-62, Public Notice, DA 21-859 (rel. July 20, 2021).